THE LEGAL SAFEGUARDS OF SANITY AND THE PROTECTION OF THE INSANE.

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OF all the new problems which press for legislation, none is more imperative than that relating to the care and cure of the insane. Uniformity of divorce laws throughout the States of the Union will in time be secured by intelligent public opinion, and the segregation and treatment of sufferers from phthisis will also be found necessary. No less imperative should be the demand for a uniform and enlightened code of laws directed to the prevention of that form of disease which we know as insanity; to the protection of those supposed to be affected by it until a proper tribunal shall have passed upon their condition, and to the management of sufferers thus affected, looking to their prompt discharge, when the result has been a cure or a sufficient amelioration to warrant freedom.

From an economic point of view the subject is grave. The care of its insane costs the State of New York annually more than five million dollars, and every year the number of patients grows larger. A proportionate increase is found, as well, in all the great centres of population. The growing competition under which the struggle for existence is carried on, the attendant temptations to dissipation and crime, the daily stress of life, all tend to promote mental disease.

The semi-sane and the insane tread upon each other's heels. In a population of seven millions, the State of New York, on any given day in the year 1899, had about 23,000 insane persons under its care, in public and private institutions. The property devoted to their use was valued at twenty-six million dollars. In the hospitals of the rest of the Union, there are probably more than two hundred thousand of the recognized insane in institutions whose value cannot be far from two hundred million dollars.

The horrors which Charles Reade described as existing in the private asylums of Great Britain need no longer be feared, although the recently exposed inhumanity in the treatment of the supposed insane in New York City would indicate that the day of brutality and incompetence is not quite past. The prison which was converted into an asylum has now become a hospital; the significance of the change is more than verbal. The shocking conditions under which the pauper insane were chained up like wild beasts, or confined in barred pens, in some of the poor-houses of twenty years ago, have been done away with in the main. The progress of reform has been steady. The insane are no longer quasi-criminals, and the evidence that our friends and neighbors are not in mental health is no longer presented in proceedings savoring of prosecution, but rather of protection.

But other reforms are vital and necessary for the benefit of the public, as well as of the individual; and I may with propriety refer in support of this statement to the proceedings in the Wendell case, with which I had the opportunity to become personally familiar. There came here very near being a substantial defeat of justice, for the lack of just such reforms in medico-legal procedure as those I am about to advocate. Similar cases occur from time to time throughout the country. The king, as *parens patriae,* had by common law the right to take charge, through his chancellor, of the person and property of lunatics. Courts of equity in the United States have a like power.

It is for the best interests of all concerned that the body politic should, in all cases, be charged with this responsibility. In New York State, and in the country in general, the insane, whether in public or private hospitals, are wards of the State. They are all entitled to the visitation, attention and intelligent interest of the State authorities. If their estates are unable to pay, they are cared for by the State without charge. They are to a degree distributed in hospitals or farms, where they receive proper care for their particular form of disease. This is a long step in advance. But even more radical reforms are as greatly needed in the medico-legal methods by which the citizens of most if not all the States are examined as to their sanity, and committed as insane, and discharged when restored to mental health.

It has been said that "the lunacy laws of the United States are, for the most part, an incongruous mass of legal verbiage."

As a matter of fact, there is no uniform law throughout the Union on this subject, any more than there is on divorce. The reasons why there should be uniformity are apparent. The Legislatures of such States as Massachusetts, Pennsylvania, New York, Iowa and Wisconsin have given increasing attention to the laws affecting the insane, and the tendency toward wiser and more humane legislation is general.

But as medical science has still a great deal to learn about this, the most subtle and difficult of all diseases, so has medico-legal science a task, which need no longer be delayed, in the simplification of the procedure for the commitment of the insane and the discharge of the sane. If the insanity of one New Yorker in every three hundred has been passed upon by the authorities, the mental affliction of others is sometimes suspected even by the non-expert. Certain disorderly persons who in public places make themselves offensive in a way difficult to reconcile with common sense; cranks who annoy strangers; unreasonable and unpractical reformers; confirmed litigants for litigation's sake, and, in many cases, even the blackmailer may be considered in this category. So also the victims of distracted homes, of overcrowded tenements, of noisome workrooms, of vice and dissipation, of conditions of civilization with which they are unable or unwilling to cope successfully, are a menace to themselves and the community. In a majority of instances, their mental disease could be cured or prevented from reaching a dangerous development, or controlled by prompt treatment, especially by removal to a new environment. In many such cases, the probability of cure lessens rapidly as the disease progresses.

Of the insane thus at large, a majority are not proper subjects for confinement; their malady responds to treatment in their homes, or to discipline, or the influences of the changed scenes which means and leisure can procure them. But others ought to be put at once beyond the possibility of peril to themselves and others. And that involves what is known in medico-legal parlance as a "commitment."

The jurisprudence of most of the States is agreed upon the necessity for surrounding the commitment with legal safeguards; yet what has been achieved in this direction leaves much to be desired. The person and property of a citizen are held sacred by the spirit of our laws. "Too much of our legislation," says an

authority, "seems to be based on the assumption of improper motives on the part of friends or relatives," who institute proceedings for a commitment. Impropriety of motive is rare, however.

The friend or relative who wishes to have another's sanity determined may, in the State of New York, call in any two of the physicians whose names appear on the register of the State Commission in Lunacy as qualified examiners—and of these there are about one thousand in New York City alone. These examiners must be of respectable character, graduates of an incorporated medical college, permanent residents of the State, and practitioners of medicine for not less than three years. If, on examining the patient together on the same day, they find evidences of insanity, their certificate so declaring must be signed under oath. Some judge of a court of record must then formally "approve" the medical certificate, over his own signature. The forms to be filled out for a commitment are printed by the State Commission in Lunacy, and require that certain data should be stated.

Careful provision is made by statute in most States that medical examiners shall be properly qualified for their work. The order of a court of record is required in all cases before the patient can be committed to an institution, the kind of institution depending on the ability of his friends or his estate to pay for his treatment in a private hospital, or the necessity for care and treatment at the expense of the State.

Now, an important part of this medical certificate of lunacy is a "statement of facts, to be made upon knowledge, information and belief by the examiners in lunacy," concerning the sex, age, nativity, bodily condition, habits, number of previous attacks and general symptoms upon which the conclusion of insanity is reached. Such a statement is everywhere essential. But the supposed facts it recites are in too many cases ridiculous and inadequate.

The following statements made in a few of the commitment papers which have come under my personal observation, as indications of insanity, may be cited. It need not be said that they are not necessarily indications of insanity; even if they were, no proof was adduced of the correctness of the statements, nor was any qualification made of their import:

"He has a wild look."
"She prays and is very religious."

"She sees things."
"He is very violent and does not mind what his friends say."
"He thinks people do not treat him right."
"He believes his wife is unfaithful to him."
"He is indifferent to his wife and children."
"He says his head hurts him."
"Her face is flushed."
"She thinks something has been put in her food."
"He is excited."
"He is sad and melancholy."
"He says he has lost his property and is very poor."
"I eat raw corn because clergymen eat raw corn."
"She has walked on the grass in her bare feet." (This patient was a disciple of Dr. Kneipp.)

In a recent case it was asserted by the patient that the nurses had "put needles into her feet." From reading this without any other knowledge of the case, the impression would be gained that it was an hallucination; but it turned out that the nurse had actually used the hypodermic needle by the doctor's orders.

In commitment papers, there is very rarely any statement of the patient's history, except what consists in categorical replies of the most meagre kind. Prolonged departure from the previous normal standard is seldom noted; while the clinical features of the insanity receive scant mention or none whatever. The hearsay statements of others, which the blank forms require, even if honest, are often unreliable and exaggerated. In fact, asylum superintendents very often have to make the diagnosis themselves, finding the commitment forms vague and misleading. It too often occurs that physicians indulge in generalizations; and an incompetent observer, in spite of the specific requests printed in the blank that the acts of the alleged lunatic and his exact speech should be detailed, is apt to give his own impressions.

The necessity for shutting out the hearsay evidence and for requiring accurate and proven statements of the facts on which a commitment is based, is self-evident. It goes without saying that no person should be committed to an institution for the insane upon mere recitals of acts which are common to the sane and to the insane. *Ira furor brevis est;* the recital of what a sane person often says and does under the excitement of anger would, if presented without explanation, be far more damning than the alleged indications of insanity recorded in many of the commitment papers.

The law should, therefore, exclude hearsay evidence. It

should require the actual legal service of the papers in all cases upon the person examined, and refuse to permit the medical examiners to be the sole judges of whether or not personal service should be dispensed with. The laws should, it seems to me, limit the number of examiners in lunacy and exact more rigid qualifications. One examiner to every 25,000 of population ought to be sufficient. At least five years of practice and some special study of mental diseases should be required; and the certificate of moral and professional qualifications should be issued in each State by some duly constituted body of the highest character, like the Board of Regents in the State of New York. In States where there is no such body, the Chief Justice of the court of last resort might act with an advisory medical board. Even after the legal certificate of two properly qualified examiners in lunacy, the judge who is asked to sign the commitment, and who can have no personal knowledge of the facts of the case, should be empowered by statute to send for the patient, if possible, and talk with him; or, still better, to send to the patient, apart from the examiners who have certified to his insanity, a medical man of high standing and special experience, who shall act as *amicus curiae* and report to the court the results of his own examination.

Proper commitment to a hospital for the insane having thus been effected, it becomes important that the right of communication between the inmate and his lawyer, friends and family in the outside world should be rigorously secured. The law prescribes that an inmate shall write at will to the authorities of the State—the Governor, the Attorney-General, the District-Attorney, the State Commissioners in Lunacy, whom he may, at any time, invoke to exercise their visitorial rights, and to the judges of the courts of record. The law in many States forbids the examination or detention of such letters by the hospital authorities, and declares that "the postage must be furnished by the institution, if relatives or friends are unable to provide the same." The law of most States makes a further provision that each patient may, once in two weeks, write other letters—to family, friends and counsel; and, in some cases, that these letters may be examined by the hospital authorities, who are authorized to use more or less discretion as to whether the letters should be forwarded to the addressees, or sent to the State Commissioners in Lunacy.

I am convinced that this discretion should be rarely exercised in the direction of secrecy, and that the safest plan on all accounts is to provide by law for free and uninspected communication between the inmate and his counsel and family. How, else, is a miscarriage of justice, such as recently occurred in a *cause célèbre,* to be rendered impossible in the future? The patient, whom I found to be quite capable of managing her affairs, and saner than many men and women now at large, although she was eccentric and at times had been excitable, was not even allowed by the physician in charge, who assumed the right of her custody, to communicate her situation to her own lawyers, and it was only an order of court that opened the prison doors. This young man had constituted himself gaoler and had surrounded the house with an armed guard.

While all private asylums should be licensed by the authorities of the State, some of the smaller institutions of this description might well be dispensed with entirely. In some private institutions, conducted by unscrupulous persons on an extravagant basis for the care of the very rich, the temptation to keep a profitable patient, after he is able to take care of himself, and is no longer insane, is undoubtedly great. Any institution conducted on a speculative plan, with the connivance of public officials, should be abolished.

The whole subject of the discharge of cured inmates—inmates who would be better off, and happier, in the outside world, useful in many ways to themselves and others—and of persons who should never have been committed, demands the most serious attention. The laws in all the States provide that a writ of *Habeas Corpus* may be applied for in behalf of any inmate in a public or private hospital for the insane, and that upon the hearing of such writ certain judicial proceedings shall be taken to determine whether or not there should be a discharge. They should also provide that any physician of a charitable public institution is absolutely forbidden to accept fees in any case.

Whenever the question of sanity is raised, I cannot too strongly state my belief, based on thirty years' experience, that no jury of laymen is fully competent to, or should be asked to, pass upon the issue of sanity. A single medico-legal commissioner, to hear and determine the facts, to advise the court and examine witnesses as to fact, as well as medical witnesses, would be pref-

erable to the present system, or to any system other than a jury of physicians, which might prove impracticable. Sheriffs' juries should never be asked to do more than pass upon the estates of the alleged lunatics, inasmuch as they are incapable of estimating the significance of symptoms.

The laws in general, however, continue to provide that, when an inmate wishes to leave a hospital for the insane, and there is a question whether he is able to do so, the issue shall be determined by a commission and a sheriff's jury. The commission—which in New York consists of a lawyer, a doctor and a layman—acts in the rôle of judge. Evidence is offered, under oath, by both doctors and laymen, before the jury, which renders a verdict as to whether the inmate in question is sane or insane. This verdict is subject to be set aside, like any other.

In a recent case, which emphasized my conviction of the urgent necessity for legal reform in lunacy procedure, the medical member of the commission practically testified as a rebutting expert before the very jury that looked up to him as judge. In effect, he "summed up" the case to the jury, from the bench, ingeniously making a picture of symptoms of the alleged disease to fit the case. The impropriety of such action is greater where such an expert-commissioner has already passed an official judgment upon the alleged lunatic.

The propriety of a law forbidding the service on any such commission of any medical man who has ever been called into the case of the patient in question needs no argument. Nor should any State Commissioner in Lunacy—whose office gives him more or less authority over all inmates of hospitals for the insane—be allowed to appear on the witness stand as a medical expert, in any proceeding for the discharge or detention of such an inmate. The fact that the State Commissioner in Lunacy has, in his private capacity as a doctor, previously examined a patient, should also be held to preclude his sitting on the commission, or testifying in that patient's case. It can readily be seen that a prejudiced man, or one jealous of his professional reputation, might suffer a warping of conscience which would render him liable to a dangerous bias.

The general belief that the insane are ill-treated in asylums has passed away, in the main, with the conditions which gave rise to it. Wanton cruelty rarely occurs in the United States, except

in badly managed places which are corrupt parts of a political machine. Where maltreatment exists, it is in general due to the fact that inexperienced men do not comprehend that the irritating violence of the patient is the result of disease. The sooner attendants and nurses cease to assign sane motives for disorderly conduct of the insane, and make this allowance for their charges, the sooner will retaliation cease.

Great care is given to individual cases. The advantages of foreign research and of opportunities for personal study constantly increase the usefulness of the medical staff of hospitals for the insane. While patients are sometimes retained longer than they need be, the controlling motive is often fear that they may harm themselves or others, or a desire to keep them away from the surroundings which caused their insanity. On the other hand, patients are sometimes discharged from the State hospitals before they ought to be, to make room for new patients. This overcrowding is, at times, a painful feature of State hospitals; it suggests the need of even greater State expenditures for buildings, pavilions and farms such as that at Islip, L. I. It is directly responsible for such escapes as that of seven insane criminals from Matteawan, several months ago, despite the watchfulness of an uncommonly competent medical superintendent.

It is difficult to emancipate the management of the insane asylum from politics, although this evil is not so dangerous as it once was, particularly in the State institutions. It is to be regretted that the insane, especially those with means, who are found in the hotels or streets and who are arrested and taken to committing depots, should be often obliged to pay large sums of money for commitment, and that they are occasionally obliged to undergo subsequent unnecessary legal proceedings. At several important centres of population, a small coterie of individuals has been recently known, where money was in sight, to act alternately as committing physicians, witnesses and commissioners. A more dangerous abuse it would be difficult to imagine. It is, indeed, the earnest hope of those who are most familiar with this subject that a reorganization of laws may result in profound and lasting improvements.

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